

¹ 5 U.S.C. § 8101 *et seq.*

form letter dated July 23, 2010 OWCP informed her that she would receive benefits on the periodic rolls commencing May 3, 2010.

In an election of benefits form, signed by a retirement services specialist on May 14, 2014, the Office of Personnel Management (OPM) advised OWCP of the optional postretirement life insurance selections appellant had selected. It indicated a selection of "Post Retirement Basic Life" at the no reduction option, commencing December 6, 2011. OPM also indicated selections of "Basic Life" and "Optional Life Insurance" with "Option A -- Standard", "Option B with No Reduction on 5 multiples", and "Option C -- no reduction with 1 multiples." Appellant's final salary on which her Federal Employees' Group Life Insurance was based was \$53,102.00. Her regular compensation benefit statements included a deduction for basic life insurance in the amount of \$16.80, as well as optional life insurance in the amount of \$80.20, but no premiums were deducted for postretirement basic life insurance at the no reduction option.

The record indicates that appellant received wage-loss benefits during the period December 6, 2011 to July 26, 2014. However, OWCP failed to deduct premiums for postretirement basic life insurance at no reduction during that period. In a manual/fiscal payment worksheet, OWCP calculated that the premiums from December 6 to 17, 2011 would have totaled \$50.16 (\$4.18 x 12 days) and for the period December 18, 2011 to July 26, 2014 they would have totaled \$3,980.72 (\$117.08 x 34 pay periods). This amounted to a total overpayment of \$4,030.88 (\$50.16 + \$3,980.72).

In an October 20, 2014 letter, OWCP informed appellant of its preliminary determination that she had received an overpayment of compensation for the period December 6, 2011 to July 26, 2014 in the amount of \$4,030.88 for which she was not at fault. It stated that while appellant had requested the no reduction option for postretirement basic life insurance commencing December 6, 2011, OWCP failed to deduct the proper premiums for that period. OWCP also found that appellant was not at fault in the creation of the overpayment and requested that she provide financial information to determine whether recovery of the overpayment could be waived. It provided an overpayment recovery questionnaire (Form OWCP-20) for appellant's completion.

Appellant did not submit any financial information or any documentation concerning her overpayment.

By decision dated November 20, 2014, OWCP finalized its determination that appellant had received an overpayment of compensation in the amount of \$4,030.88 for the period December 6, 2011 through July 26, 2014 as premiums for postretirement basic life insurance at no reduction were not deducted from her compensation payments. It found that she was not at fault in the creation of the overpayment but denied waiver of the overpayment. OWCP determined that \$100.00 would be deducted every 28 days from appellant's continuing compensation benefits beginning December 14, 2014.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Group Life Insurance program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of

the options.² The coverage for basic life insurance is effective unless waived,³ and premiums for basic and optional life coverage are withheld from the employee's pay.⁴ Upon retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance coverage, in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁵ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989,⁶ however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his compensation.⁷

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from compensation, so that life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).⁸

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.⁹ Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.¹⁰ When an underwithholding of life insurance

² *Id.* at § 8702(a).

³ *Id.* at § 8702(b).

⁴ *Id.* at § 8707.

⁵ *Id.* at § 8706.

⁶ *Id.* at § 8707(b)(2).

⁷ *Id.* at § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

⁸ *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

⁹ 5 C.F.R. § 870.504 (a)(1).

¹⁰ *Id.* at 504(b).

premiums occurs, the entire amount is deemed an overpayment of compensation because the Office must pay the full premium to the OPM upon discovery of the error.¹¹

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹² When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.¹³

ANALYSIS

The record reflects that OPM notified OWCP that appellant had elected postretirement basic life insurance at no reduction, effective December 6, 2011. OWCP calculated the amount of premiums it should have deducted for the no reduction postretirement basic life insurance option and determined the resulting overpayment to be \$4,030.88. The Board finds, however, that the record does not provide any evidence that appellant signed a document electing that option. While the record contains a summary of the election of benefits form, signed by an OPM retirement insurance specialist, the form signed by appellant actually electing this option is not of record. The Board has previously found that OWCP must document whether and when appellant elected life insurance coverage after retirement.¹⁴

In *N.J.*¹⁵ the Board remanded the case to OWCP for further development because the evidence of record was unclear as to why postretirement optional life insurance premiums were deducted as of a certain date. Similarly, in this case, the evidence of record fails to establish the basis for the optional postretirement life insurance premiums at the no reduction option, as the record does not contain a signed election form. It is unclear from the record why OPM informed OWCP that premiums for postretirement basic life insurance at no reduction should have been deducted as of December 6, 2011.

As the fact and amount of overpayment are not clearly established by the record, the case will be remanded to OWCP. On remand, OWCP should obtain from OPM the executed election form completed by appellant prior to determining whether appellant received an overpayment of compensation. After such further development as OWCP deems necessary, it should issue a *de novo* decision.¹⁶

¹¹ 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹² *Id.* at § 8102(a).

¹³ *Id.* at § 8129(a).

¹⁴ *R. W.*, Docket No. 11-1303 (issued January 9, 2012).

¹⁵ Docket No. 13-2164 (issued April 18, 2014).

¹⁶ As the issues of fact and amount of overpayment are to be further developed upon return of the case record, the issues of waiver and recovery of the overpayment are not in posture for decision at this time. *See S.G.*, Docket No. 14-769 (issued December 9, 2014); *see also J.H.*, Docket No. 07-656 (issued July 26, 2007).

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant received an overpayment of compensation in the amount of \$4,030.88 for the period December 6, 2011 through July 26, 2014.

ORDER

IT IS HEREBY ORDERED THAT the November 20, 2014 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further development to be followed by an appropriate decision.

Issued: April 19, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board